IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1202 of 1996

in

SPECIAL CIVIL APPLICATIONNo 2395 of 1993

with

LETTERS PATENT APPEAL NO. 1307 OF 1996
in

SPECIAL CIVIL APPLICATION NO. 2395 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHCHANDRA T TANKARIA

Versus

CENTRAL EXCISE AND CUSTOMS DEPARTMENT

Appearance:

MR MB GANDHI for Appellant

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

Date of decision: 26/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No.2395 of 1993. As the appeals involve determination of common questions of facts and law, we propose to dispose them of by this common judgment.

#. The appellants in Letters Patent Appeal No.1202 of 1996 are original petitioners. They are owners of premises bearing block No.5, situated in Stadium House, at Navrangpura, Ahmedabad. An area admeasuring 97.12 sq. metres was let out by the original owners to Central Excise and Customs Department under a lease deed dated June 15, 1975, at the rate of Rs.1.25 per sq. ft. The lease was for a period of five years. The Directorate of Estates, Government of India had issued office memorandum dated July 10, 1972 stipulating that without determination of lease, the rent should not be enhanced and it should be enhanced on fulfilment of certain conditions. On expiry of lease deed, the owners had terminated the lease and called upon the the lessee to increase the rent. However, no steps were taken by the lessee to revise the rent. Another office memorandum dated September 1, 1982 was issued by the Directorate of Estates again stipulating that the rent should be got reassessed from the Central Public Works Department ('CPWD' for short) on the expiry of period of five years from the date of original assessment and after every five years thereafter. However, no steps were taken by the department either to revise the rent or to obtain necessary certificate from the CPWD. Under the circumstances, the original petitioner instituted Special Civil Application No.2395 of 1993 and prayed the Court to issue a writ of mandamus directing the respondents to approach CPWD for reassessment of the rent of the property in question for a period from 1982 to August 31, 1987 and to pay the reasonable market rent to him that may be assessed by the CPWD. The petitioner also prayed to direct the respondents to execute a lease deed with effect from September 1, 1987 and to make payment of rent at the rate of Rs.5227/- per month. The petitioners also prayed to direct the respondents to reassess rent or to get it reassessed through CPWD for the period from 1992 to 1997 and to make payment according to new assessment from 1.9.1992 till the expiration of five years.

#. The record of the petition does not indicate that

any reply was filed by any of the respondents to the petition.

#. The learned Single heard the parties and fixed the rent at the rate of Rs.3174/- for a period from 1982 to 1987, in view of the contents of certificate dated October 24, 1994. By the impugned judgment, the learned Judge has directed the respondents to pay rent to the original petitioners for the period 1982-87 at the rate of Rs.3174/- per month after making adjustment of the rent paid in excess or short pursuant to the interim orders which were passed in the petition. This is challenged by the Central Excise and Customs Department as well as Union of India in Letters Patent Appeal lNo.1307 of 1996, whereas the original petitioners have challenged Letters Patent Appeal No.1202 of 1996 challenging that part of the judgment of the learned Single Judge by which the prayer made by the petitioner to direct the respondent to pay interest on the arrears of rent is rejected.

#. We have heard learned counsel for the parties at length. The submission that the claim for rent from September 1, 1982 to August 31, 1987 is barred by principles of delay and laches and, therefore, the impugned judgment should be set aside has no merits. Though the power under Article 226 to issue an appropriate writ is discretionary and inordinate delay in making the motion for a writ may be adequate ground for refusing to exercise the discretion, it is well settled that no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and question of exercise of discretion has to be decided in view of the facts of each case. It is relevant to notice that the revision of rent was dependent on the assessment which was to be made by CPWD and CPWD made the assessment for the first on October 24, 1994. Though the original petitioner had made application dated September 21, 1981, requesting the department to revise the rent as per office memorandum of 1972, no action at all was taken by the department in terms of the said office memorandum. Thereafter, office memorandum dated September 1, 1982 was issued by Directorate of Estates, Government of India, directing the departments concerned to revise the rent on fulfilment of certain conditions. Even thereafter, no steps were taken by the department either to revise the rent or to get reasonable rent assessed by CPWD. The CPWD assessed the rent for the first time on October 24,

1994, after filing of the petition. Under the circumstances, it cannot be said that there was any delay on the part of the original petitioner in approaching the Court. The learned Single Judge while dealing with the submission advanced by the learned Additional Central Government Standing Counsel regarding delay and laches in filing the petition has adverted to several reported decision of the Supreme Court on the point and held that there is no justification in refusing relief of reasonable rent to the original petitioner on the basis of certificate which was issued in the year 1994 for the period from 1982 to 1987. We are in complete agreement with the view expressed by the learned Single Judge and we hold that the learned Single Judge was justified in entertaining the prayer made by the petitioner for refusing the rent for the period from September 1, 1982 to August 31, 1987.

#. The contention that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy available to him under the said Act also cannot be accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar such relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department had filed reply contesting the petition, inter alia, on

the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.2395 of 1993, out of which Letters Patent Appeal No.1307 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see Hirday Narain v. Income Tax Officer, Bareilly, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to Special Civil Application No.2398 of 1993, the Enforcement Directorate had addressed a letter dated March 19, 1996 to the Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness land willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea of alternative remedy available under the Rent Act was raised.

#. The submission that determination of rent after deducting average of the two figures mentioned in the certificate dated October 24, 1994 is erroneous and, therefore, the appeal should be allowed cannot be accepted. It may be stated that for the period from June 13, 1987 to June 12, 1992 and from June 13, 1992 to June 12, 1997, the determination of amount was left to the discretion of the Court. The learned Judge has taken average of the two figures mentioned in the certificate dated October 24, 1994 for determining rent for the years

1982 to 1987 which cannot be said to be either illegal or erroneous or arbitrary in any way so as to warrant interference of this Court in the present appeal. Therefore, the impugned judgment cannot be set aside on the ground that the learned Single Judge has committed error in adopting the average method while determining rent for the period from 1982 to 1987.

#. Thus, we do no find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1307 of 1996 and the same is liable to be dismissed.

#. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1204 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

#. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

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